

Asbestos Significant New Use Rule (SNUR)

Action Being Taken

- EPA is finalizing a SNUR under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for discontinued asbestos uses (no longer ongoing and not already prohibited).
- Persons subject to the asbestos SNUR are required to notify EPA at least 90 days before commencing any manufacturing (including importing) or processing of asbestos (including as part of an article) for a significant new use.
- Manufacturing (including importing) and processing (including as part of an article) for the significant new use may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

Scope of Action

- The Asbestos Hazard Emergency Response Act (i.e., TSCA Title II) defines asbestos as the asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite. *See* 15 U.S.C. 2642(3). The asbestos SNUR uses this definition of asbestos.
- The following discontinued (but not otherwise banned) uses are subject to the SNUR: adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products (other than brake blocks used in oilfield drawworks); any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA.

Background on Partial TSCA Ban

- In 1989, EPA attempted to ban most asbestos-containing products by issuing a final rule under Section 6 of TSCA. However, the ban was partially vacated and remanded to EPA in 1991 by the Fifth Circuit Court of Appeals. As a result, the remaining partial 1989 asbestos ban prohibits five asbestos-containing products no longer in use at the time of the ban (corrugated paper, rollboard, commercial paper, specialty paper, and flooring felt) and new uses initiated for the first time after August 25, 1989.

Related Asbestos Action

- EPA designated asbestos as one of the first 10 chemical substances to undergo chemical risk evaluation under TSCA section 6(b)(2)(A) (81 FR 91927, December 19, 2016). The TSCA risk evaluation focuses on the circumstances under which asbestos is intended, known, or reasonably foreseen to be manufactured (including imported), processed, distributed in commerce, used, or disposed of in the United States (i.e., the conditions of use). The SNUR complements the TSCA section 6 risk evaluation by ensuring that any discontinued use of asbestos not otherwise already prohibited (and therefore could resume at any time) must be reviewed and approved by EPA prior to recommencing.

Public Comments

- EPA issued the proposal on June 11, 2018, opening a 60-day public comment period that closed on August 10, 2018. In the proposal, EPA requested public comment on information regarding any ongoing uses not identified by the Agency as well as additional uses not identified as no longer ongoing. The Agency did not receive any comments that provided additional information regarding the ongoing uses or discontinued uses of asbestos.
- The Agency received nearly 5,900 public comments, the majority of which were anonymous. However, the Agency only received approximately 30 germane comments, half of which are substantive. Many of the other commenters mistakenly associated the term “new use” to mean that the Agency proposed to allow new uses of asbestos that were otherwise prohibited.
- EPA did not receive adverse comment from industry. One industry commenter did ask that EPA clarify that the SNUR would not regulate the disposal of asbestos-containing materials. EPA will clarify in the final rule that disposal of asbestos-containing materials is not subject to the SNUR.
- Of the substantive comments received, most suggested broadening the scope of the SNUR to cover all uses of asbestos that are no longer ongoing.
- Other comments received suggested that EPA:
 - Clarify the Agency’s review process of Significant New Use Notices
 - Make mining for asbestos subject to the SNUR
 - Clarify whether recycling of legacy asbestos-containing material is subject to the SNUR
 - Apply the export notification requirements under TSCA section 12(b) to all the covered uses (articles).

Response to Public Comments

- The Agency agrees with commenters and is finalizing the rule to ensure any discontinued (but not banned) use of asbestos be subject to the rulemaking. Specifically, EPA is broadening the SNUR to add the following use categories to the existing 14 significant new uses of asbestos (including as part of an article) that were identified in the proposed rule:
 - Cement products
 - Friction Materials (with certain exception)
 - Woven products
 - Packings
 - Any other use of asbestos that is neither ongoing nor already prohibited under TSCA
- EPA disagrees that it should require export notification for articles under TSCA 12(b) as this would impact both ongoing uses of asbestos articles and discontinued ones identified in the SNUR. EPA believes this issue would be more appropriately addressed during consideration of any potential risk management actions following completion of EPA’s risk evaluation for asbestos, pursuant to TSCA section 6(b)(4), in the event of an unreasonable risk determination.
- EPA also disagrees that it should require a significant new use notice for *any* asbestos mining in the United States. EPA does agree with commenters that mining for significant

new uses identified in the rule is subject to the SNUR because EPA considers mining as production under the TSCA definition of manufacturing. Therefore, the Agency will indicate in the preamble that manufacturing by mining for a significant new use identified in the rule requires a SNUN.

Rule Costs:

In the unlikely event that a SNUN is submitted, costs (includes the most recent TSCA user fees) are estimated to be approximately \$23,000 per SNUN submission for large business submitters and about \$10,000 for small business submitters.

Timing:

EPA plans to publish the final asbestos significant new use rule in the *Federal Register* on or before April 30, 2019.